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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,622	12/21/2004	Ronald Kenneth Cardow	5956	4829

7590 08/16/2007  
Jacobson & Johnson  
Suite 285  
One West Water Street  
St Paul, MN 55107-2080

EXAMINER
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JOHNSON III, HENRY M

ART UNIT	PAPER NUMBER
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3739

MAIL DATE	DELIVERY MODE
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08/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/518,622

Applicant(s)

CARDOW ET AL.

Examiner

Henry M. Johnson, III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/21/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the two fluid sources must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the cooperative relationship of the second fluid source to the apparatus is not disclosed. It is not clear how alternating sources would be delivered; i.e. a single spray or two spray applicators. No drawing shows multiple fluid sources.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,148,926 to Bullington. Bullington teaches an apparatus for delivery of a fluid to a spray applicator (Fig. 1, # 15) from either of two storage reservoirs (Fig. 2, #s 4 & 5), one of said reservoirs being heated (Fig. 2, # 8), a pressure pump (Fig. 1, # 23), supply lines to the applicator (Fig. 1, #s 9 & 10), the supply lines having individual valves (Fig. 1, #s 12 & 13). The valves inherently provide the capability to alternate between the fluid sources. The apparatus of Bullington includes a tub to catch the water (Col. 2, line 6). The application to an injured area for a specific purpose is intended use. A recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Yanush, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); In re Finsterwalder, 436 F.2d 1028, 168

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USPQ 530 (CCPA 1971); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); Ex parte Masham, 2 USPQ2d 1647 (BdPatApp & Inter 1987).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,148,926 to Bullington. Bullington is discussed above and teaches an integral heating member, but does not teach an integral or build-in pressure pump. Bullington 's disclosed pump is operably connected to the apparatus, but not built-in. It would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate the pressure pump, since it has been held that one-piece construction, in place of separate elements fastened together, is a design consideration within the skill of the art. In re Kohno, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965).

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Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,148,926 to Bullington as applied to claim 3 above and further in view of U.S. Patent 5,958,462 to McLean. Bullington is discussed above, but does not teach the use of salts in the fluid. McLean discloses the use of various salts mixed with water for the relaxation of muscles or elimination of muscle spasms (abstract). It would have been obvious to one skilled in the art to include salts for treating muscles as taught by McLean in the fluid of the invention of Bullington as McLean clearly suggests the use of salts as a therapeutic additive.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,148,926 to Bullington in view of U.S. Patent 5,958,462 to McLean as applied to claim 4 above and further in view of EP 0 107 960 to Schoeman. Bullington and McLean are discussed above, but do not teach the use of a 12 volt pressure pump. Schoeman teaches a portable shower with a water reservoir (Fig. 2) and a pressure pump that operates off of a 12 volt battery (page 5, lines 19-21). It would have been obvious to one skilled in the art to use a 12 volt pump as taught by Schoeman in the invention of Bullington/McLean as a battery supply is an obvious choice for use with portable equipment.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,148,926 to Bullington in view of U.S. Patent 5,958,462 to McLean in view of EP 0 107 960 to Schoeman as applied to claim 5 above and further in view of U.S. Patent 5,980,561 to Kolen et al. Kolen et al. disclose an apparatus for applying thermal therapy to a body with a recirculating fluid loop (abstract) that uses a thermostat for temperature control (Col. 6, lines 25-30). It would have been obvious to one skilled in the art to use a thermostat as taught by Kolen et al. in the invention of Bullington/ McLean/Shoeman as thermostats by definition control temperature and are pervasively used in fluid systems to maintain a proper temperature or as a safety measure to prevent excessive temperatures.

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Regarding claim 7, a change in the size and shape of prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966); In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,148,926 to Bullington in view of WO 86/01978 to Hydroterapi AB and further in view of U.S. Patent 4,523,594 to Kuznetz. Bullington is discussed above, but does not teach application of alternating hot and cold fluids to a treatment area. Hydroterapi AB teaches an apparatus for showering the legs of a horse or other animal (human) using alternating pulses of hot and cold water (page 2, lines 21-22), said pulses are controlled by a timing device to set the desired interval between the pulses of hot and cold water (page 3, lines 5-10). Neither teaches the use of alternating hot and cold for treating injuries. Kuznetz teaches the application of alternating hot and cold to injuries such as strained muscles. It would have been obvious to one skilled in the art to apply alternating hot and cold to an injured area as taught by Kuznetz combined with the teachings of Bullington and Hydroterapi AB which together provide teachings of an apparatus to deliver such treatment. It is proper to take into consideration not only the teachings of the prior art, but also the level of ordinary skill in the art. In re Luck, 476 F.2d 650, 177 USPQ 523 (CCPA 1973). Specifically, those of ordinary skill in the art are presumed to have some knowledge of the art apart from what is expressly disclosed in the references. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962).

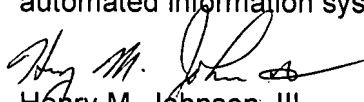
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Henry M. Johnson, III  
Primary Examiner  
Art Unit 3739